

**UNITED STATES OF AMERICA and
THE PEOPLE OF THE STATE OF
ILLINOIS,**

Plaintiffs,

V.

THE PREMCOR REFINING GROUP, INC.

Defendant.

CIVIL ACTION NO. 98-C-5618

JUDGE MAROVICH

CONSENT DECREE

I. BACKGROUND

WHEREAS, Plaintiffs, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”), and the People of the State of Illinois (the “State”), by their attorney, James E. Ryan, Attorney General of the State of Illinois, on his own motion and on behalf of the Illinois Environmental Protection Agency (“IEPA”) have both filed complaints (the “Complaints”) asserting claims against Defendant The Premcor Refining Group, Inc. (“Premcor” or “Defendant”), formerly known as Clark Refining and Marketing, Inc., regarding Defendant’s facility in Blue Island, Illinois (the “Facility”), pursuant to the Clean Air Act, as amended (“CAA”), 42 U.S.C. § 7401 et seq.; the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.; the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), 42 U.S.C. § 9601 et seq.; the Emergency Planning and Community Right-To-Know Act, as amended (“EPCRA”), 42 U.S.C. §

11001 et seq.; the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (2000); the Illinois Emergency Planning and Community Right to Know Act, 430 ILCS 100/1 et seq. (2000); the Illinois Hazardous Materials Emergency Act, 430 ILCS 50/1 et seq. (2000); and the Illinois Oil Spill Responders Liability Act, 740 ILCS 113/1 et seq. (2000).

WHEREAS, the Complaints allege, inter alia, that Defendant violated requirements of the CAA, regulations promulgated thereunder, and provisions of the State of Illinois Air Pollution Implementation Plan (“Illinois SIP”), which U.S. EPA approved pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, and violations of which constitute violations of the CAA pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7410, including: Illinois SIP provisions set forth at 35 Ill. Adm. Code §§ 218.105(g), 218.445(d), 218.446(a), and 218.447(a); New Source Performance Standards (“NSPS”) applicable to petroleum refineries, 40 C.F.R. Part 60 Subpart J; National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”) for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF; amended order EPA-5-113(a)-R-94-3 issued pursuant to Sections 113(a) and 114 of the CAA, 42 U.S.C §§ 7413 and 7414; and Sections 9 and 9.1(d) of the Illinois Environmental Protection Act, 415 ILCS 5/9 and 9.1(d) (2000).

WHEREAS, the Complaints allege, inter alia, that Defendant violated requirements of the CWA, as well as the Illinois Water Pollution Control Regulations, 35 Ill. Adm. Code Part 302 et seq. and the Sewage and Waste Control Ordinance promulgated by the Metropolitan Water Reclamation District of Greater Chicago (“MWRDGC Ordinance”), both of which U.S. EPA authorized pursuant to Section 307(b) of the Clean Water Act, 33 U.S.C. § 1317(b), and violations of which constitute violations of the CWA pursuant to Section 307(d) of the Clean Water Act, 33 U.S.C. § 1317(d), including: Section 301(a) of the CWA, 33 U.S.C. § 1251(a); 40

C.F.R. §§ 110.3, 112.3(e), 112.4, 112.5, 112.7, 403.5(b), 403.17(c), and 403.17(d); various provisions of the MWRDGC Ordinance; Sections 12(f) and 13.3 of the Illinois Environmental Protection Act, 415 ILCS 5/12 (f) and 13.3 (2000); and Section 7.01 of the Illinois Hazardous Material Emergency Act, 430 ILCS 50/7.01 (2000).

WHEREAS, the Complaints allege, inter alia, that Defendant violated requirements of RCRA, regulations promulgated thereunder, and provisions of the Illinois Waste Disposal Regulations, 35 Ill. Adm. Code Part 700 et seq., which U.S. EPA authorized pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and violations of which constitute violations of RCRA pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928(a)(2), including the requirements set forth at 35 Ill. Adm. Code §§ 703.121(a), 722.134(a), 725.131, 725.273, 728.107 and 40 C.F.R. § 265.1084(a)(2); and Section 21 of the Illinois Environmental Protection Act, 415 ILCS 5/21 (2000).

WHEREAS, the Complaints allege, inter alia, that Defendant violated the reporting requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, Section 304 of EPCRA, 42 U.S.C. § 11004, Section 10 of the Illinois Emergency Planning and Community Right to Know Act, 430 ILCS 100/10 (2000), and Section 7.01 of the Illinois Hazardous Materials Emergency Act, 430 ILCS 50/7.01 (2000);

WHEREAS, the State of Illinois' Complaint alleges, inter alia, that Defendant violated Sections 9, 12 and 21 of the Illinois Environmental Protection Act, 415 ILCS 5/9, 12 and 21 (2000), and that Defendant is liable for damages and costs under the Illinois Oil Spill Responders Liability Act, 740 ILCS 113/1 et seq. (2000);

WHEREAS, Defendant has denied any violations of the laws and regulations alleged in the Complaints;

WHEREAS, in early 2001, Defendant ceased petroleum refining operations at the Facility;

WHEREAS, Defendant intends in the future to utilize portions of the Facility for tank farm, bulk terminal and marine dock operations and to continue the operation of its waste water treatment plant;

WHEREAS, it is the purpose of the Parties entering into this Consent Decree to assure compliance with the provisions of the CAA, CWA, RCRA, CERCLA, EPCRA, the Illinois Environmental Protection Act, the Illinois Emergency Planning and Community Right to Know Act, the Illinois Hazardous Materials Emergency Act, the Illinois Oil Spill Responders Liability Act, and the Illinois Pollution Control Board Regulations that Plaintiffs have alleged in their respective Complaints that Defendant has violated;

WHEREAS, the Parties to this Consent Decree recognize that the Consent Decree is a settlement of a contested matter and that participation in the settlement does not constitute or represent any admission of law or fact by any party, except as provided herein;

WHEREAS, by their respective undersigned representatives, Plaintiffs and Defendant, having agreed that settlement of this matter has been negotiated by the parties in good faith and that this Consent Decree is fair, reasonable, consistent with applicable law and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before taking any testimony, without adjudication of any issues of fact or law, and upon consent and agreement of the parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 3008(a) and (h) of RCRA, 42 U.S.C. § 6928(a) and (h); Section 109(c) of CERCLA, 42 U.S.C. § 9609(c); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3); Rule 24 of the Federal Rules of Civil Procedure (for the pendent State claims); and over the parties to this action. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), 33 U.S.C. § 1319(b), and 42 U.S.C. §§ 6928(a) and (h), 7413(b), 9609(c), 9613(b), and 11045(b)(3).

2. Solely for the purposes of this Consent Decree and the underlying Complaint, Defendant waives all objections and defenses that it may have to the jurisdiction of the Court or to venue in this District. Defendant shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

3. This Consent Decree shall apply to and be binding upon the United States, the State of Illinois, and upon Defendant and its successors, assigns, subsidiaries, transferees, or related entities that may come to own or operate the Facility or portions thereof. In any action to enforce the terms of this Consent Decree, Defendant shall not raise as a defense the failure of its

officers, directors, agents, servants, contractors, or employees to take any actions necessary to comply with the provisions hereof.

4. No change in ownership of the Facility or any portion thereof shall in any way alter Defendant's obligations or rights under this Consent Decree; nor shall any change in corporate status or ownership affect Defendant's obligations or rights under this Consent Decree. At least thirty (30) days prior to transferring ownership or operation of any part of the Facility, Defendant shall give notice of the terms of this Consent Decree to the prospective successor owner or operator of the Facility or portion thereof, and shall simultaneously verify to U.S. EPA and the State in writing, in the manner set forth in Section XI (Notice), that such notice has been given. Premcor may require, by contract, any new owner or operator of the Facility or any part thereof to comply with all or some of the obligations of the Consent Decree, but no such contract shall relieve Defendant of any obligation set forth herein unless agreed to in writing by the United States and the State and approved by the Court.

IV. DEFINITIONS

5. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in the CAA, CWA, RCRA, CERCLA, or EPCRA, the Illinois Environmental Protection Act, the Illinois Emergency Planning and Community Right to Know Act, the Illinois Hazardous Materials Emergency Act, and the Illinois Oil Spill Responders Liability Act, or in regulations promulgated thereunder, shall have the meanings set forth in such definitions.

6. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

“CAA” means the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

“CERCLA” means the Comprehensive Environmental Response, Conservation and Liability Act, 42 U.S.C. § 9601 et seq.

“Consent Decree” or “Decree” shall mean this Consent Decree and all attachments hereto, and all modifications of this Consent Decree.

“CWA” shall mean the Clean Water Act, 33 U.S.C. § 1251 et seq.

“Day” shall mean a calendar day unless expressly stated to be a Working Day. “Working Day” shall mean a day other than a Saturday, Sunday or federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal or state holiday, the period will run until the close of business of the next Working Day.

“Defendant” shall mean The Premcor Refining Group, Inc.

“EPCRA” means the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001 et seq.

“FCCU” shall mean Fluid Catalytic Cracking Unit.

“Facility” shall mean the tank farms, bulk terminal, marine dock, pipelines, waste water treatment plant, and former petroleum refinery at 131st Street and Kedzie Avenue, Blue Island, Illinois.

“IEPA” shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State of Illinois.

“Illinois Emergency Planning and Community Right to Know Act” shall mean the Illinois Emergency Planning and Community Right to Know Act, 430 ILCS 100/1 et seq. (2000).

“Illinois Environmental Protection Act” shall mean the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (2000).

“Illinois Hazardous Materials Emergency Act” shall mean the Illinois Hazardous Materials Emergency Act, 430 ILCS 50/1 et seq. (2000)

“Illinois Oil Spill Responders Liability Act” shall mean the “Illinois Oil Spill Responders Liability Act”, 740 ILCS 113/1 et seq. (2000).

“Interest” shall mean a rate of interest at the rate specified for a money judgment in a civil case recovered in a district court pursuant to 28 U.S.C. § 1961.

“MWRDGC” shall mean the Metropolitan Water Reclamation District of Greater Chicago.

“NPDES” shall mean the National Pollutant Discharge Elimination System.

“NSPS” shall mean the Standards of Performance for New Stationary Sources, 40 C.F.R. Part 60.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic number.

“Parties” shall mean the United States of America, the People of the State of Illinois, and Defendant.

“Plaintiffs” shall mean the United States of America and the People of the State of Illinois.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

“Section” shall mean a portion of this Consent Decree identified by a roman numeral.

“State” shall mean the State of Illinois, including the Illinois Attorney General’s Office and IEPA.

“United States” shall mean the United States of America and its departments and agencies, including the U.S. EPA.

“U.S. EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Work” shall mean all activities Defendant is required to perform under this Consent Decree.

V. COMPLIANCE

7. By its signature to this Consent Decree, Defendant certifies that, to the best of its knowledge and belief after diligent review, the Facility is in compliance with: the CAA, the conditions and limitations of the Illinois SIP, and all permits, orders and regulations issued by U.S. EPA, the State or a court of competent jurisdiction, pursuant to the CAA, including, without limitation, 40 C.F.R. Part 60, and 40 C.F.R. Part 61; the CWA and all permits, orders and regulations issued by U.S. EPA, the State or a court of competent jurisdiction pursuant to the CWA, including without limitation 42 C.F.R. Part 112; RCRA and all permits, orders and regulations issued by U.S. EPA, the State or a court of competent jurisdiction pursuant to the RCRA; CERCLA and its implementing regulations; EPCRA and its implementing regulations; the Illinois Emergency Planning and Community Right to Know Act and its implementing regulations; the Illinois Hazardous Materials Emergency Act and its implementing regulations; the Illinois Oil Spill Responders Liability Act; the Illinois Environmental Protection Act and all permits, orders and regulations issued by IEPA or the Illinois Pollution Control Board or a court of competent jurisdiction.

8. By its signature to this Consent Decree, Defendant certifies that it has ceased petroleum refining operations at the facility, and has canceled or withdrawn all permits or permit applications issued by or submitted to U.S. EPA, IEPA, or MWRDGC related to the Facility, with the following exceptions: Industrial User Discharge Authorization # 13468-3 issued by MWRDGC; NPDES Permit No. ILR000118 issued by IEPA; NPDES Permit Renewal Application IL0071013 submitted to IEPA; and the CAA Title V permit application submitted to IEPA.

New Stormwater Permit, Interim Requirements, and Related Matters

9. Within thirty (30) days of entry of this Consent Decree, Premcor shall submit to IEPA a site-specific NPDES permit application that will supercede Premcor's previous site-specific permit application, No. IL0071013. The application shall address the entire Facility, and shall accurately reflect current operations at the Facility, including all bulk terminal/tank farm operations, operations of the dock facility, wastewater treatment plant operations, and any investigation or remediation activities in place or contemplated in the near future that may be associated with runoff of contaminated stormwater during future operations of the Facility. If Premcor contends that stormwater will be the only discharge from the Facility, Premcor shall submit Form 1, Form 2F and appropriate supporting documentation along with its application for amendment. The application shall identify all possible routes, scenarios or opportunities for the diversion of any process or other contaminated water to enter the Facility's stormwater system. If Premcor subsequently changes its operations or initiates additional investigation or remediation activities, it must update its permit as required by applicable law.

10. Until such time as IEPA issues a new site-specific NPDES permit to Premcor for the Facility, Premcor shall:

- a) Sample its stormwater outfall(s) to the Cal/Sag Canal and any overflow from Junction Box 38 for oil and grease and TOC within one hour of the initiation of a discharge to the Cal/Sag. Premcor shall provide U.S. EPA and IEPA with copies of all sample results within fifteen (15) days following the end of each calendar quarter.
- b) Premcor shall monitor for free product or sheens on the Cal/Sag Canal at least once each day by examining i) all of the Facility's outfalls (including the Homan Avenue outfall), ii) the dock area, and iii) the banks of the Cal/Sag Canal adjacent to the Facility. Premcor shall maintain a log that includes the date and time of each inspection, the name of the individual conducting the inspection, and the inspector's observations (including the apparent source(s) or cause(s) of any sheen, if one is observed). Premcor shall notify the Illinois Emergency Management Agency immediately (within one hour) whenever any free product or sheen is observed. Premcor also shall report to U.S. EPA and IEPA, within fifteen (15) days following the end of each calendar quarter, the presence of free product or sheen, the apparent source(s) or cause(s), and measures that were or will be undertaken to prevent future similar incidents.
- c) For each tank, bermed enclosure, or other container Premcor utilizes to store stormwater, including but not limited to Tanks 45 and 58, Premcor

shall: i) notify U.S. EPA and IEPA within 24 hours of any overflow; ii) record the date, time, volume, duration, and point of discharge; iii) sample and analyze such discharge for oil and grease, total organic carbon, and volatile organic compounds; and iv) report the observations and analytical results to U.S. EPA and IEPA within fifteen (15) days of the end of the calendar quarter in which the overflow occurs.

- d) Premcor shall not cause or allow discharges from any outfall not permitted by IEPA, including but not limited to the Homan Avenue Outfall.
- e) Premcor shall operate the wastewater treatment plant at the Facility in the manner described in the approved Wastewater Treatment Plant Operations and Maintenance Plan, required pursuant to Paragraph 11, below.

11. Not later than fifteen (15) days after entry of this Consent Decree, Premcor shall submit a “Wastewater Treatment Plant Operations and Maintenance Plan” to U.S. EPA and IEPA for review and approval that shall: i) identify all components or units of wastewater treatment equipment it uses at the Facility, ii) describe the operations and maintenance of all such equipment, including the schedule for preventative maintenance and a list of spare parts kept on hand, iii) describe the nature, procedure and frequency of training that Premcor will provide to its employees or contractors relating to wastewater treatment, including the identification of the individuals that will receive such training, and the procedure and schedule by which canal dock operators will become certified State of Illinois Class K operators (subject to union approval).

12. Through its signature to this Consent Decree, Premcor certifies that it has modified the system for delivering waste water by installing a 10 inch line from Junction Box 38 to Tank

45, a spare 800 gallon per minute electric pump at Junction Box 38, and a direct line from Tank 45 to the API Separator. Premcor further certifies that it has installed permanent enclosed covers on the API separator and Dissolved Air Floatation (“DAF”) units, along with an induced draw fan and thermal oxidizer in the API/DAF area. The operation and maintenance plan, required in Paragraph 11 above, will include a discussion of the operation of this piping and equipment.

New MWRDGC Permit

13. Within thirty (30) days of entry of this Consent Decree, Premcor shall submit to MWRDGC an application for amendment to its MWRDGC discharge authorization permit. The application shall accurately reflect current operations at the Facility, including all bulk terminal/tank farm operations, operations of the dock facility, wastewater treatment plant operations, and any investigation or remediation activities in place or contemplated in the near future that may be associated with runoff of contaminated stormwater during future operations of the Facility. If Premcor subsequently changes its operations or initiates additional investigation or remediation activities, it must update its permit as required by applicable law.

14. Until such time as MWRDGC issues a new discharge authorization permit, Premcor shall notify U.S. EPA, IEPA, and MWRDGC within 24 hours of any bypass of a component or unit of the wastewater treatment system at the Facility and analyze each outfall for oil and grease on each day that such component or unit is bypassed. Premcor shall report the analytical results to U.S. EPA and IEPA within fifteen (15) days of the end of the calendar quarter in which the bypass occurred.

SPCC Plan Amendment

15. Within sixty (60) days of entry of this Consent Decree, Premcor shall submit to U.S. EPA amendment to its current Spill Prevention, Control and Countermeasures Plan that provides the following additional information:

- a) Adds signature block of appropriate management official;
- b) Describes methods of internal and external tank testing;
- c) Indicates the time when new employees are provided training (relative to their start date) and the frequency of spill briefings; and
- d) Provides information regarding the permeability of containment area floors. For those containment areas where facility records do not contain information regarding containment floor construction or permeability, Premcor shall sample the containment floors to assess their permeability. Prior to conducting such sampling, Premcor shall provide a sampling plan for assessing the permeability of containment area floors (including an implementation schedule) to U.S. EPA for review and approval. U.S. EPA shall use best efforts to review the sampling plan within thirty (30) days of receipt.

16. Within sixty (60) days of entry of this Consent Decree, Premcor shall submit to U.S. EPA (1) its anticipated schedule for dismantling and cleaning tanks and containment at the Facility; (2) a list of all the tanks retrofitted according to API 653, including a description of the changes that were made to each tank; and (3) an implementation schedule for the remaining tanks to be retrofitted, including the proposed changes to each tank. Within fifteen (15) days of the end of each calendar quarter, Premcor shall submit an update of this information to U.S. EPA, until such time as each tank and containment area at the Facility has been dismantled or retrofitted.

New Title V Permit

17. Within thirty (30) days of entry of this Consent Decree, Premcor shall submit to IEPA a revised Title V permit application that will supersede Premcor's previous Title V application. The application shall accurately reflect current operations at the Facility, including all bulk terminal/tank farm operations, operations of the dock facility, wastewater treatment plant operations, and any investigation, treatment or remediation activities in place or contemplated in the near future and shall meet the requirements of Section 39.5 of the Illinois Environmental Protection Act. The application shall include an assessment of the applicability of LDAR requirements.

VI. CIVIL PENALTY

18. Within thirty (30) days of entry of this Consent Decree, Defendant shall pay to the United States a civil penalty in the amount of \$3,125,000, plus Interest accrued from the date this Consent Decree is lodged with the Court. The payment shall be made by Fed Wire Electronic Funds Transfer ("EFT") to the Department of Justice Lockbox Bank in accordance with specific instructions to be timely provided to Defendant upon entry of this Consent Decree and shall reference DOJ Case No. 90-5-2-1-2214, the Civil Action Number assigned to this case by the United States District Court, Northern District of Illinois, and U.S.A.O. File No. 1998v01402. Any funds received at the Lockbox Bank after 3:00 p.m. (Eastern Time) shall be credited on the next business day. Defendant shall advise the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois at the time payment is being wire-transferred. In addition, Defendant shall confirm to U.S. EPA and the Department of Justice that

payment has been made by providing notice in the manner specified in Section XI (Notice), below.

19. Within thirty (30) days of entry of this Consent Decree, Defendant shall pay to the State a civil penalty in the amount of \$3,125,000, plus Interest accrued from the date this Consent Decree is lodged with the Court. The payment shall be made in four bank cashier's checks or certified checks divided as follows: (a) a check for \$625,000 plus any Interest on that amount accrued from the date this Consent Decree is lodged with the Court shall be made payable to the "Illinois Environmental Protection Agency, for deposit in the Environmental Protection Trust Fund" and shall be sent by overnight mail to the Illinois Environmental Protection Agency, Fiscal Services Section, 1021 North Grand Avenue East, P.O. Box 19726, Springfield, Illinois, 62794-9276; (b) a check for \$1,000,000 plus any Interest on that amount accrued from the date this Consent Decree is lodged with the Court shall be made payable to the "Attorney General's Court Ordered and Voluntary Compliance Payment Projects Fund" to be used at the discretion of the Illinois Attorney General's Office for the advancement of environmental protection activities in Illinois and shall be sent by overnight mail to RoseMarie Cazeau, Chief, Environmental Bureau, Illinois Attorney General's Office, 188 West Randolph Street, 20th Floor, Chicago, Illinois 60601; (c) a check for \$1,000,000 plus any Interest on that amount accrued from the date this Consent Decree is lodged with the Court shall be made payable to the "Illinois Environmental Protection Agency for deposit in the Illinois Hazardous Waste Fund" and shall be sent by overnight mail to the Illinois Environmental Protection Agency, Fiscal Services Section, 1021 North Grand Avenue East, P.O. Box 19726, Springfield, Illinois, 62794-9276; and (d) a check for \$500,000 plus any Interest on that amount accrued from the date this Consent Decree is lodged with the Court shall

be made payable to the “Illinois Environmental Protection Agency, for deposit in the Oil Spill Response Fund” and shall be sent by overnight mail to the Illinois Environmental Protection Agency, Fiscal Services Section, 1021 North Grand Avenue East, P.O. Box 19726, Springfield, Illinois, 62794-9276. On all checks, Defendant shall reference the Civil Action Number assigned to this case by the United States District Court, Northern District of Illinois and Premcor’s FEIN number shall appear on the civil penalty payment to ensure proper credit. In addition, Defendant shall confirm to the State that payments has been made by providing noticed in the manner specified in Section XI (Notice), below.

20. Civil penalties paid pursuant to this Consent Decree shall not be deductible for purposes of Federal or State taxes.

VII. STIPULATED PENALTIES

21. Defendant shall be liable for stipulated civil penalties to the United States and the State for failure to comply with the requirements of this Consent Decree unless excused under Section IX (Force Majeure). Defendant shall pay the following stipulated penalties per violation per day for noncompliance with any of the requirements identified below:

	<u>Each Period of Noncompliance</u>		
	Days 1-30 <u>(Per Day)</u>	Days 31-60 <u>(Per Day)</u>	Over 60 days <u>(Per Day)</u>
Failure to comply with any requirement of this Consent Decree.	\$1000	\$2000	\$5000

22. All stipulated penalties shall begin to accrue on the day after complete performance is due or the day a violation begins, and shall continue to accrue through the day complete performance occurs or the day complete correction of noncompliance occurs.

23. Nothing herein shall preclude the simultaneous accrual of penalties for separate violations of this Consent Decree.

24. Nothing herein shall be construed as prohibiting, altering or in any way limiting the ability of the United States or the State to seek any additional legal or equitable relief available by virtue of Defendant's violation of this Consent Decree or of the statutes and regulations upon which this Consent Decree is based, or for Defendant's violation of any applicable provision of law. Defendant reserves all rights to contest such actions. The decision of the United States or the State to seek such additional relief shall not be subject to dispute resolution.

25. Defendant shall pay the amount of any stipulated penalties required by Paragraph 21, above, within thirty (30) days after Defendant's receipt from U.S. EPA or the State of a demand for payment of penalties, unless Defendant invokes the Dispute Resolution procedures set forth in Section IX of this Decree. Penalties paid after this thirty (30) day period shall include accrued Interest. Defendant shall pay half of any stipulated penalties due to the United States and half to the State. Payments to the United States shall be made by certified or cashier's check(s) payable to the "Treasurer of the United States" and mailed to the United States Attorney's Office for the Northern District of Illinois. Payments to the State shall be made by certified or cashier's check(s) payable to the "Illinois Environmental Protection Agency, for deposit in the Environmental Protection Trust Fund," include Premcor's FEIN number and mailed to the Illinois Environmental Protection Agency, Fiscal Services Section. In a transmittal letter accompanying

the checks, Defendant shall indicate that the payment is for stipulated penalties, shall state the basis for the payment of stipulated penalties, and shall reference the case name and civil action number, U.S.A.O. File No. 1998v01402, DOJ File No. 90-5-2-1-2214, and the name and address of the party making payment. Copies of the transmittal letter and check(s) shall be sent on the same day to the United States and the State in the manner specified in Section XI (Notice). Notwithstanding the payment provisions of this Paragraph, Defendant may pay stipulated penalties by wire transfer with the written agreement of the United States and/or the State, following payment instructions to be provided by the United States and/or the State.

VIII. FORCE MAJEURE

26. If any event causes, may cause a delay in, or may prevent Defendant's compliance with any provision of this Consent Decree, Defendant shall notify the U.S. EPA and the State in writing as soon as practicable, but in any event within ten (10) days of when Defendant first knew of the event, or should have known of the event by the exercise of due diligence. In this notice, Defendant shall specifically reference this provision of the Consent Decree and describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Defendant to prevent or minimize the delay, and the schedule by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid and minimize such delays.

27. Failure by Defendant to comply with the above notice requirements shall constitute a waiver of Defendant's right to assert force majeure. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

28. If U.S. EPA and the State agree that the violation has been or will be caused solely by circumstances beyond the control of, or any entity controlled by, Defendant, including its contractors, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence, U.S. EPA and the State shall extend in writing the time for compliance with the particular requirement(s) affected by the force majeure event by a period not exceeding the length of the delay actually caused by such circumstances. Defendant shall not be liable for stipulated penalties for the period of any such delay. Such an extension shall not alter the schedule for any other part of this Consent Decree, except that U.S. EPA and the State shall extend the time for performance of other tasks under this Consent Decree that U.S. EPA and the State determine will necessarily be delayed as a result of the force majeure.

29. If U.S. EPA and the State do not agree with Defendant's claim of force majeure, the Defendant may invoke the Dispute Resolution procedures of this Consent Decree. If the Court determines that the violation has been or will be caused solely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including its contractors, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence, Defendant shall be excused as to that violation and delay (including stipulated penalties), but only for the delay actually caused by such circumstances.

30. Defendant shall have the burden of demonstrating that the violation has been or will be caused solely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including its contractors, that the duration of the delay caused by such circumstances is or was warranted solely by reason of such circumstances, and that Defendant could not have foreseen and prevented such delay by the exercise of due diligence. Defendant

also shall bear the burden of proving the duration and extent of any delay attributable to such circumstances. Absent written approval by the United States and the State, an extension of one compliance date based on a particular event shall not of itself result in an extension of a subsequent compliance date or dates.

31. Unanticipated or increased costs or expenses associated with the performance of Defendant's obligations under this Consent Decree shall not constitute circumstances beyond Defendant's control, or serve as a basis for an extension of time under this Section.

IX. DISPUTE RESOLUTION

32. Unless otherwise expressly provided for in this Consent Decree, Defendant shall have the right to dispute any decision of U.S. EPA and the State under this Consent Decree, and the provisions of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the provisions in this Section shall not apply to actions by the United States or the State to enforce obligations of Defendant that have not been disputed in accordance with this Section.

33. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when Defendant sends a written Notice of Dispute to the Plaintiffs. Defendant must send the Notice of Dispute to the United States and the State within fifteen (15) days of the decision of U.S. EPA and/or the State that it seeks to dispute.

34. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by Plaintiffs shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures of this Section by serving on the Plaintiffs a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by Defendant, and any actions which Defendant considers necessary to resolve the dispute.

35. An administrative record of the dispute shall be maintained by U.S. EPA. The administrative record shall include the Statement of Position and all of the information provided by Defendant pursuant to the preceding Paragraph, as well as any other documents relied upon by Plaintiffs in making their final decision pursuant to the next Paragraph. Where appropriate, Plaintiffs shall allow submission of supplemental statements of position, data, reports, or affidavits, by the parties to the dispute.

36. If Plaintiffs concur with Defendant's position, Plaintiffs shall provide written notice of such concurrence to Defendant. If Plaintiffs do not concur with the Defendant's position, they shall so notify the Defendant in writing, setting forth the basis of their decision. In the event of disagreement between U.S. EPA and the State concerning any such dispute, the position of U.S. EPA shall be the position of Plaintiffs. Plaintiffs' decision shall control unless, within fifteen (15) days of receipt of Plaintiffs' written determination, Defendant files a notice of judicial appeal with this Court which shall set forth a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must

be resolved to ensure orderly implementation of this Consent Decree. Plaintiffs may file a response to the notice of judicial appeal.

37. In any such judicial appeal, Defendant shall have the burden of demonstrating that the Plaintiffs' position is an incorrect interpretation of the Consent Decree. With respect to scientific or technical determinations, Defendant shall have the burden of proving that the position of Plaintiffs is arbitrary and capricious or otherwise not in accordance with law. The Court shall base its determination pursuant to this Paragraph on the administrative record. The Court may grant relief, or may, upon motion of any party or on its own motion, remand the dispute for further consideration by Plaintiffs, including supplementation of the administrative record as appropriate.

38. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone any of Defendant's obligations under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue during proceedings to resolve disputes under this Consent Decree until the following occurs:

a. If the dispute is resolved by agreement or by a decision of Plaintiffs that is not appealed to the Court, accrued penalties determined to be owing shall be paid to Plaintiffs within fifteen (15) days of Defendant's receipt of Plaintiffs' written demand for payment following the agreement or the receipt of Plaintiffs' decision;

b. If the dispute is appealed to the Court and Plaintiffs prevail in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owed to the Plaintiffs within sixty (60) days of receipt of the Court's decision, except as provided in Subparagraph c., below;

c. If the District Court's decision is appealed by any party, Defendant shall pay all accrued penalties determined by the District Court to be owing to Plaintiffs into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the Plaintiffs or to Defendant to the extent that it prevails.

X. PUBLIC ACCESS TO INFORMATION

39. All information and documents Defendant submits to U.S. EPA or the State pursuant to this Consent Decree shall be subject to public inspection, unless Defendant identifies and supports a claim for confidential business information in accordance with 40 C.F.R. Part 2 or a claim for confidential business information or trade secret in accordance with Section 7.1 of the Illinois Environmental Protection Act, 415 ILCS 5/7.1 (2000), and rules adopted thereto.

40. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA or the State, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B and the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. (2000), and rules implementing the Illinois Freedom of Information Act..

XI. NOTICE

41. Unless otherwise provided herein, a notification to or communication with United States or the State shall be deemed submitted on the date it is postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

42. Unless this Consent Decree states otherwise, all notices, submissions, or communications in connection with this Consent Decree shall be addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(Reference: DOJ Case No. 90-5-2-1-2214)

Chief, Air Enforcement and Compliance
Assurance Branch
Air and Radiation Division, AE-17J
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to the State of Illinois:

Chief, Environmental Bureau
Illinois Attorney General's Office
188 West Randolph Street; 20th Floor
Chicago, Illinois 60601

Assistant Counsel
Office of Emergency Response
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Associate Counsel
Air Enforcement Unit
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

James P. O'Brien
Manager, Office of Emergency Response
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62702

As to Defendant:

Jeffry N. Quinn
Executive Vice President
The Premcor Refining Group, Inc.
8182 Maryland Avenue
St. Louis, Missouri 63105

John C. Berghoff, Jr.
Mayer, Brown, Rowe & Maw
190 South LaSalle Street
Chicago, Illinois 60603

43. All submissions, reports, notices, or permit applications or modifications required by this Consent Decree to be submitted by the Defendant shall be certified by a responsible corporate official, and accompanied by the following certification:

I certify that the information contained in or accompanying this submission is true, accurate and complete. This certification is based on my personal preparation, review, or

analysis of the submission, and/or supervision of persons who, acting on my direct instructions, made the verification that the submitted information is true, accurate and complete.

XII. GENERAL PROVISIONS

44. Except as provided in Paragraph 45 and 46, complete performance by Defendant of all of its obligations under this Consent Decree shall fully satisfy all civil liability of the Defendant for the violations alleged in the Complaints in this action through the date of lodging of the Consent Decree. Nothing in the Consent Decree is intended, nor shall be construed, to operate in any way to resolve any other potential liability of the Defendant.

45. Plaintiffs specifically reserve, and this Consent Decree is without prejudice to, all rights of the Plaintiffs against the Defendant with respect to the following matters:

a. Claims relating to releases or threats of releases of hazardous substances, crude oil, petroleum products, pollutants, contaminants or solid or hazardous wastes under Sections 106 and 107 of CERCLA, 42 U.S.C. § 9606 and 9607; Section 7003 of RCRA, 42 U.S.C. § 6973; Section 311(e) and (f) of the Clean Water Act, 33 U.S.C. § 1321(e) and (f); the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq.; Sections 9,12, 21, and 22.2 of the Illinois Environmental Protection Act, 415 ILCS 5/9, 12, 21, and 22.2 (2000); or the Illinois Oil Spill Responders Liability Act, 740 ILCS 113/1 et seq. (2000), including but not limited to claims relating to investigation and/or remediation of any areas or media impacted by spills or releases of gasoline, oil, or other contaminants, pollutants or materials at or from the Facility, at or from the site of the Midlothian Creek pipeline release, or at or from the site of the Burnham, Illinois,

pipeline release (the Midlothian Creek and Burnham, Illinois, pipeline releases are identified with specificity in Section IV(c)(2) of the Final Agreed Order entered in People v. Clark Refining and Marketing, 95 CH 2311, Cook County);

b. Liability for violations of State, federal, local and common laws and/or regulations after the lodging of this Consent Decree;

c. Liability or claims for natural resource damages;

d. Claims based on Defendant's failure to hold allotment trading units in a transaction account related to Sections 9.8(b) and 39.5(6)(a) of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 205.150(c)(1); and

e. Liability or claims based on Defendant's failure to satisfy the requirements of this Consent Decree.

Nothing in this Consent Decree shall act as a bar, adjudication or resolution of any such claims. In any subsequent proceeding concerning such claims, Defendant shall not assert any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting or other defenses based upon any contention that the claims raised by the Plaintiff(s) in the subsequent proceeding were or should have been or could have been resolved in the instant action.

46. Defendant reserves the right to seek credit for emission reductions resulting from the cessation of refinery operations at the Facility pursuant to the State of Illinois' permitting program. The State of Illinois reserves the right to contest the applicability of the Emissions Reduction Market System ("ERMS") program to the Facility or to otherwise contest the award of allotment trading units to Defendant, including but not limited to the failure to hold allotment

trading units in a transaction account related to Section 9.8(b) and 39.5(6)(a) of the Illinois Environmental Protection Act and 35 Ill. Admin. Code 205.150(c)(1).

47. This Consent Decree shall not relieve Defendant of its obligation to comply with all applicable provisions of Federal, State or local law or the Final Agreed Order entered in People v. Clark Refining and Marketing, 95 CH 2311 (Cook County); nor shall it be construed to be a ruling on, or determination of, any issue related to any Federal, State or local permit; nor shall it be construed to constitute U.S. EPA or State approval of any equipment or technology Defendant may install in accordance with the terms of this Consent Decree.

48. This Consent Decree does not limit or affect the rights of Defendant, the United States, or the State as against any third parties.

49. Each Party to this action shall bear its own costs and attorney's fees.

50. Any modification of this Consent Decree must be in writing and approved by the Court. Any such written modification must be agreed to and signed by all parties to this Consent Decree.

51. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by all parties.

52. In addition to any other statutory or regulatory authority, the U.S. EPA, the Illinois EPA, their employees and representatives, and the Illinois Attorney General, his agents and representatives, upon presentation of appropriate credentials, shall have a right of entry to the Facility, at all reasonable times, for the purpose of conducting inspections as necessary. In conducting any inspection of the Facility, the U.S. EPA, Illinois EPA, and/or the Attorney

General, may take such photographs or samples as they deem necessary in order to conduct their inspection.

53. The parties stipulate that this Consent Decree is entered into for purposes of settlement only and neither the fact that a party has entered into this Consent Decree nor any of the provisions contained herein may be used in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. Notwithstanding the previous sentence, and without admitting the violations alleged in the Complaints, Defendant agrees not to challenge Plaintiffs' use of this Consent Decree for purposes of Section 309 of the CWA, 33 U.S.C. § 1319, Section 113(e) of the CAA, 42 U.S.C. § 7413, or Sections 39(i) and 42(h) of the Illinois Environmental Protection Act, 415 ILCS 5/39(i) and 5/42(h) (2000), in any future enforcement action or permit proceeding on the grounds that there was no adjudication of violations made herein.

XIII. DOCUMENT RETENTION

54. Defendant agrees that it shall preserve, during the pendency of this Consent Decree and for a minimum of three (3) years after its termination, at least one legible copy of all records and documents, including electronic data, in the possession, custody, or control of its divisions, employees, agents, accountants, contractors, and attorneys, that relate to the performance of Defendant's obligations under this Consent Decree, including, but not limited to, documents embodying or relating to the results of any sampling, tests, or other data or information generated or acquired by Defendant, or on Defendant's behalf.

XIV. RETENTION OF JURISDICTION

55. This Court shall retain jurisdiction to modify or enforce the terms of this Consent Decree or to take any action necessary or appropriate for its construction or execution.

XV. TERMINATION

56. This Consent Decree shall terminate twelve (12) months after Defendant has completed all actions required of Defendant in the Consent Decree, provided that Defendant has been in continuous compliance with the terms of the Consent Decree for the preceding twelve (12) months. At such time, Defendant shall certify to U.S. EPA and the State that Defendant has completed its obligations under the Consent Decree. If U.S. EPA and the State agree, the United States, the State, and Defendant shall jointly petition the Court to terminate the Consent Decree. If U.S. EPA and the State do not agree, the United States and the State shall provide Defendant with written notification stating the reasons why this Consent Decree should not be terminated. Upon receipt of such notification, any party may initiate the Dispute Resolution process set forth in Section IX of this Consent Decree.

XVI. PUBLIC COMMENT

57. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold their consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. This Consent Decree shall become effective upon entry by the Court.

XVII. SIGNATORIES

58. Each undersigned representative of Defendant, the Assistant Attorney General for Environment and Natural Resources Division of the Department of Justice, the People of the State of Illinois ex rel. James E. Ryan, and the IEPA certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such party to this Decree.

59. Defendant consents to the entry of this Consent Decree without further notice. Defendant further agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

SO ORDERED THIS ____ DAY OF _____, 2002.

United States District Judge

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America and the State of Illinois v. The Premcor Refining Group, Inc.:

FOR PLAINTIFF UNITED STATES OF AMERICA:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

Date: _____

JAMES D. FREEMAN
Trial Attorney
United States Department of Justice
Environmental Enforcement Section
999 18th Street; Suite 945NT
Denver, Colorado 80202
(303) 312-7376

Date: _____

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

By: _____
LINDA WAWZENSKI
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-1994

Date: _____

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America and the State of Illinois v. The Premcor Refining Group, Inc.:

SYLVIA K. LOWRANCE
Acting Assistant Administrator for Office of
Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: _____

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America and the State of Illinois v. The Premcor Refining Group, Inc.:

DAVID A. ULLRICH
Acting Regional Administrator
Region V
U.S. Environmental Protection Agency

Date: _____

RODGER FIELD
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Date: _____

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America and the State of Illinois v. The Premcor Refining Group, Inc.:

FOR PLAINTIFF-INTERVENOR THE STATE OF ILLINOIS:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. JAMES E. RYAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN
Chief, Environmental Enforcement/ Asbestos
Litigation Division
188 W. Randolph Street
Chicago, Illinois 60601

Date: _____

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America and the State of Illinois v. The Premcor Refining Group, Inc.:

JOSEPH E. SVOBODA
Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Date: _____

Through their undersigned representatives, the Parties agree and consent to entry of the foregoing Consent Decree in United States of America and the State of Illinois v. The Premcor Refining Group, Inc.:

JEFFRY N. QUINN
Executive Vice President
The Premcor Refining Group, Inc.
8182 Maryland Avenue
St. Louis, Missouri 63105

Date: _____